

BURDEN OF PROOF UNDER EVIDENCE LAW

By *Jatin Bakshi*

ABSTRACT

Law has a monumental significance in a civilized society and when it comes to country like India, it becomes very interesting to see a mixture of old legislations working shoulder to shoulder with new ones. The old legislations which were incorporated by the British, its effectiveness can be understood by the very fact that those legislations are still in function without any flaws and the best example of such a statute is Evidence Act. Evidence Act covers various facets of law and one of them is “Burden of Proof” which the researcher has chosen as the title for this paper. Unlike other procedural laws like CPC and CrPC which deal with a particular nature of cases, the principles laid down under Evidence Act applies to both of these laws. The researcher has dealt in detail the several aspects of burden of proof under Evidence Act.



BURNISHED LAW JOURNAL

Burden of Proof under Evidence Law

What can be asserted without proof can be dismissed without proof.

-Christopher Hitchens

INTRODUCTION

Every case irrespective of the nature, starts with the occurrence of certain events, and the elaboration of those events are called facts and there are some legal aspects to it which is to be decided by the court and there comes the role of proving them. For that purpose every judicial proceeding has for its purpose to ascertain some rights or liability. These rights and liabilities have direct nexus with the facts of the case which is mandatory to be proved in court with a purpose to satisfy the court. Sections 101-111 of the Evidence Act, deal with the provisions regarding to “who is to lead evidence and prove the case”. These rules are called as “Burden of Proof.” Burden of Proof is nothing but legal burden. It simply means that the party have an obligation to prove the fact and it must be done based on which court will give its decision which can either go in his favour or in favour of his opponent. This burden of proving is called burden of proof i.e. (*onus probandi*) if in case, no evidence is being presented by the party on whom the burden is located then in that case, the issue will be found against him.

Generally, in most of the cases the burden of proof lies on the affected party i.e. the person who have instituted the case with the view that best evidence must be produced before the court. This does not mean that the other party will always be excused from this liability of burden of proof. In cases like rape, the burden of proof lies on the accused to prove that he has not done it. However the burden of proof has been divided in two parts i.e. **burden of proof as a matter of law and pleading** which says that a burden of proving all the facts or establishing one’s case. It is fixed at the beginning of the trial by the statements of pleadings and it is settled as a question of law, remaining unchanged under whatever circumstances. The other is **burden of proof as a matter of adducing evidence** which says that at the beginning or at any stage as such it is always unstable and may shift constantly during the trial.

It lies at first on the party who would fail if no evidence was given on either side. The burden shifts as soon as he produces the evidence which gives rise to a presumption in his favour. It may again shift back which can give rise to a presumption in his favour. It may again shift back on him of the rebutting evidence produced by his opponent preponderates. This being

the position the question as to the onus of proof is only a rule for deciding on whom the obligation rests of going further if he wishes to win.¹

So now the question is that how can the burden of proof be determined in any case. Well, section 102 of Indian Evidence Act has a direct nexus with the answer to this question which specifically talks about *“on whom the burden of proof lies”* which reads as *“The burden of proof in a suit or in a prosecution lies on that person who would fail if no evidence at all were given on either side.”*

In cases of medical negligence if the party alleges contributory negligence on the part of plaintiff then he/she must prove this fact or else if no evidence is given then the case will ultimately fail. For example where a person claims for the benefits of adoption then he /she must prove a valid adoption. In many cases, mostly under section 103 where a particular fact has to be proved by the party, in these cases the burden lies on the person who claims to believe the existence of the said fact. For example if a person who signed loan document admitting the loan and if he says that he has signed a blank paper, then the burden would lie upon him to prove this fact.

OBJECTIVE

1. To study the concept of burden of proof under Evidence Law.
2. To analyse the different aspects of burden of proof in Indian Legislation.
3. To analyse the role of judiciary in interpreting the said concept

METHODOLOGY

Having regard to the nature of the subject and in preparing the same, doctrinal method has been used. It is entirely based on the secondary sources collected from text-books on Evidence Law, journals, articles, adjudicated cases, and websites etc. The collected sources have been presented in past form in order to make the study more informative, analytical and useful for the readers. Also in this study the contemporary adjudicated cases on burden of proof in Evidence Law are elaborately explained.

GENERAL CONCEPT OF BURDEN OF PROOF AND ITS IMPORTANCE

The obligation to prove a certain thing is called as burden of proof. Where the person is required to prove the existence or truth of a fact then it is said that he is having the burden of proving the said fact. This obligation which lies on the party must be done in order to establish relevant fact or facts in issue of a case and must be established to a level of certainty where

¹ Bimal Dey v. Basudev Subba 2010 (4) GLT 305

there can be no doubt about the truthfulness of the fact. For example, in cases of murder, the prosecution may allege that all the conditions constituting a murder are fulfilled in this case and also that all such conditions are facts in issue and there is an obligation to prove their existence, this obligation is a burden of proof.²

Section 101 of Indian Evidence Act defines burden of proof as “**whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**”

Normally, the affirmative or positive facts are easy facts and are also easy to explain and prove in comparison to the negative facts. The principle of section 101 is that a where a party who wants the court to believe in the facts and pass a judgement thereof in his favour then for that purpose he must prove the fact without a doubt.³

When a person claims that the allegation is false and bogus, in that case the party making this allegation must prove it and if there is a question w.r.t. the transaction and its genuineness then the party relying on the said transaction must first prove its genuineness. Only after all these the defendant would be allowed to counter such proof and establish that the said transaction was false and fictitious.⁴ As discussed above regarding the shifting of burden of proof to the accused in certain cases like rape so in that scenario it is not for the victim to show that there is no consent on her part. It is for the accused to show that she had consented.⁵ Also in the case of *Neelkantan v Mallika Begum*⁶ the tenant of a building claimed his protection from being evicted of the property. He contended that as the property was situated in slum area so Slum Area Act 1971 won't be applicable in this case. So in this case the burden to prove that the property was in slum area would be on the tenant.

Till now we have seen that when the burden of proof can be imposed on either party. When the entire evidence which is possible on a subject, has already come before the court, from whatever source may be, it is well settled that the question of burden of proof as determining factor of the entire case and can only arise if the court finds an evidence for or against so

² Amrendra Kumar, “*Burden of Proof*”, available at

<https://www.scribd.com/document/265033648/Burden-of-proof-docx> visited at November 9, 2020 at 9:30 AM

³ Anushka, “*Burden of Proof*”, available at <http://lawtimesjournal.in/burden-of-proof/> visited at November 9, 2020 at 5:12 PM

⁴ Subhra Mukharjee v Bharna Coking Coal Ltd, AIR 2000 SC 1203

⁵ State of HP v Shree Kant Shekari, AIR 2004 SC 4404

⁶ AIR 2002 SC 827

perfectly balanced that it cannot come to a conclusion. Then in that cases, the onus will determine the matter and the person on whom the burden of proof lies will lose.⁷

It may be noted that a person cannot be relieved on his burden of proving a fact even if the fact is such that it is very difficult or rather impossible to prove. Where a wife in a divorce petition alleged adultery on the part of her husband, it was held that the burden of proving was upon her to prove the facts and it was no excuse to say it was virtually impossible to procure evidence of the said fact.⁸ There is a general rule that a party who wishes to proceed to the court must prove all the facts that are necessary for that purpose. However, it is subject to two exceptions viz, (a) he will not be required to prove such facts which are within the knowledge of other party (section 106); and (b) he will not be required to prove so much of his allegations w.r.t. any presumption of law (section 107-113) or in some cases, of facts (section 114) in his favour.

BURDEN & ONUS OF PROOF

There is a vital differentiation between “burden of proof” and “onus of proof”. Burden of proof generally lies on the person who is duty bound to prove a fact and this burden never shifts, but in the other case onus of proof shifts. Such a shifting of onus of proof is an uninterrupted process during the course of evaluation of evidence. In criminal cases, once the prosecution satisfies that the accused has committed certain crime for which he/she is being charged, then the onus to prove that he/she has not committed any sort of that crime and so should not be punished for the same shifts to the accused. The term onus probandi merely means that if a fact has to be proved the person in whose interest it is to prove, it should adduce some evidence however slight, upon which the court could find the fact which he desires the court to find.⁹

The question of onus is always on a person who asserts a proposition or a fact which is not self-evident. Thus the onus of proving negligence in cases of Railway Company lies on the plaintiff when he asserts that the injuries caused to him are by reason of negligence of Railway Company.¹⁰ When the entire evidence which is possible on a subject has already come before the court from whatever source it may be, it is well settled that question of burden of proof

⁷ The burden of Proof: why people should properly support their arguments, <https://effectiviology.com/burden-of-proof/> visited at November 9, 2020 at 5:52 PM

⁸ Pushpa Datta Mishra v Archana Mishra, AIR 1992 MP 260

⁹ Nitish Guru, 12 important distinguish between burden of proof and onus of proof, available at, <https://brainly.in/question/8958785> visited at November 9, 2020 at 10:01 AM

¹⁰ Diva Rai, *Railway Accident Claim: Filing compensation for death while Boarding or De-boarding Trains*, available at,

<https://blog.ipleaders.in/railway-accident-claim-how-to-file-for-compensation-for-death-caused-while-boarding-or-de-boarding-trains/>, visited at November 10, 2020 at 10:22 AM

becomes immaterial.¹¹ A person cannot be relieved on his burden of proving a fact even if the fact is such that it is very difficult or rather impossible to prove. Where a wife in a divorce petition alleged adultery on the part of her husband, it was held that the burden was on her to prove the fact and it was no excuse to say that it was virtually impossible to procure evidence to that fact.¹²

Burden of Proof and Res Ipsa Loquitur

Till now it is very evident that the concept of burden of proof is not restricted or static and hence it has several dimensions and changes its character based on the type of case. However in all actions of negligence, the burden of proof is on the plaintiff, to establish the defendant's negligence. The plaintiff, who alleges the defendant's negligence, must affirmatively prove it. He must prove on a balance of probabilities, the essentials of negligence, namely, the defendant owed him a legal duty to take care, the defendant committed breach of that duty to take care, and the breach resulted in damage to the plaintiff. If the plaintiff fails to prove the above essentials, it is said that he failed to prove the defendant's negligence.¹³ There are certain circumstances, where it may not be possible for the plaintiff to prove the defendant's negligence, since the reason for the accident may completely be within the knowledge and control of the defendant.

This inability on the part of the plaintiff to prove defendant's negligence should not be a hardship or detriment to the plaintiff to get remedy, in such cases, it is sufficient for the plaintiff to prove the accident only, instead of the defendant's negligence. The accident affords prima facie evidence that the tort constituting the cause of action is the result of want of care on the part of the defendant. This is known as the maxim of "res ipsa loquitur," which means, "the thing speaks for itself. Thus invoking this maxim in cases of negligence has two implications. The first is that it leads to a speculation of negligence, due to which defendant would be required to give some reasonable explanation as to how an accident occurred without his/her negligence. If the defendant does specify any evidence which is consistent with the absence of negligence on his part, then the inference of negligence will be rebutted, and then the plaintiff has to produce positive evidence w.r.t this and has to prove that the defendant has acted without reasonable care. On this basis, the burden of proof does not shift to the defendant. If the probabilities are equally balanced that the defendant was or was not negligent, the plaintiff's action fail.

¹¹ Ibid

¹² Pushpa Datta Mishra v Archana Mishra, (AIR 1992 MP 260)

¹³ Dr. Pushkal Kumar Pandey, Commentary on Indian Evidence Act 1872, (1st Edition, 2020)

The other side of the coin is that when *res ipsa loquitur* is applied, it has the potential that it can reverse the burden of proof i.e. defendant would be required to show that the damage or loss caused was not because of his negligence or carelessness and on the other side it is the duty of the court to rely on evidences presented before it and decide whether there was negligence or not. Thus, the defendant's position is no different from that which arises when he is faced with positive evidence from the plaintiff raising an inference of negligence.

Exceptions in Criminal Cases

The burden in criminal cases is on the side of prosecution and to save himself, he is duty bound to prove his case beyond the reasonable doubt. According to section 105 which says that “burden of proof is upon the accused of showing existence, if any of circumstances which brings the offence charged within any of the special as well as any of the general exceptions or provisions contained in IPC or any law defining the offence. Further, the court shall presume the absence of such circumstances.” The fundamental principle of criminal jurisprudence is that ***an accused is presumed to be innocent until proven guilty*** and like said earlier burden lies on the shoulders of prosecution. This is a general burden and it never shifts. Section 105 is an important qualification of this general rule. This section is an application, perhaps an extension of the principle laid down in section 103.

In *Dayabhai v State of Gujarat*¹⁴ it was observed by court that “*there is no conflict between the general burden, which is always on the prosecution and which never shifts and the special burden that rests on the accused under section 105.*” Also in the case of *Rabindra Kumar Dey v State of Orissa*¹⁵ it was observed that “*section 105 does not at all indicate the nature and standard of proof required. The Evidence Act does not contemplate that the accused should prove his case with the same strictness and vigour as the prosecution, it is sufficient if he proves his case by standard of ‘preponderance of probabilities’ envisaged by section 5 as a result of which he succeeds not because he proves his case to the guilt but because probability of the version given by him throws doubt on the prosecution case and thus the prosecution cannot be said to have established the charge beyond reasonable doubt.*”

The onus of an accused person may well be compared with the onus of a party in a civil cases. Further if in case, prosecution proves beyond reasonable doubt that the accused has committed offence the accused has committed offence, the accused can rebut this presumption either by leading evidence or by relying on the prosecution evidence itself. If upon evidence adduced in

¹⁴ AIR 1964 SC 1563

¹⁵ (1976) 4 SCC 233

the case either by prosecution or by defence a reasonable doubt is created in the mind of the court, the benefit of it should go to the accused.¹⁶

It may be noted that in certain cases like 'socio-economic' and 'environmental' legislations, the burden lies upon the accused. For example under the Prevention of Corruption Act 1988, the burden is on the accused to account for his possessions. In cases where the presumptions of innocence is reversed by the statutory provisions then in those cases burden to prove is on the accused that he was an innocent person (innocent possession of assault rifle) and it must be noted that such burden should not have the same gravity as that of prosecution but even so should be of greater probability.¹⁷ In environmental cases, there is reversal of burden of proof based on precautionary principle.¹⁸

Exception to Section 101

Section 106 talks about burden of proving facts which are especially within the knowledge then in those cases the burden of proving lies on him. Section 106 is an exception to the rule laid down in section 101. It is designed to meet certain exceptional cases where it would be impossible or very difficult for the prosecution to establish facts which are especially within the knowledge of an accused. Like for example if a person was found in possession of a stolen property immediately after the theft and then he claims that there was no such intention to receive any stolen property, he must prove this fact because he is at a better position to explain this and moreover for this fact is especially within his knowledge only.

Similarly in cases of plea of alibi, only the person raising the plea knows that where he was at the time of happening of certain offence so the burden lies on him to prove the fact. This section can also be applied in cases of custodial death or dowry death, and also even in the cases of negligence of carriers of goods.¹⁹

In case of Proving Deaths

Till now we have talked about the burden of proof in cases of proving certain happenings but as mentioned earlier that the said concept is not static at all and hence its extent can be seen even in cases of proving deaths or proving person alive who has been unheard for last 7 years and this concepts has been very well enshrined under section 107 and section 108 of Indian

¹⁶ Shantanu Shatrak, *Section 105 of Indian Evidence Act 1872* available on <https://www.shareyouressays.com/knowledge/section-105-of-the-indian-evidence-act-1872/120492> visited on November 9 at 11:09 AM

¹⁷ Sanjay Dutt v State {(1994) 5 SCC 410}

¹⁸ A.P. Pollution Control Board v Prof. MV Nayadu {(1992) 2 SCC 718}

¹⁹ Shantanu Shatrak, *Section 106 of Indian Evidence Act 1872*, available on <https://www.shareyouressays.com/knowledge/section-105-of-the-indian-evidence-act-1872/120492> visited on November 9 11:12 AM

Evidence Act 1872. In case of proving death of the person, the burden lies on the person who affirms it (**Section 107**). Talking about the other side of the coin i.e. section 108 deals with the cases where the burden is to prove that the person who is alive but who has not been heard for 7 years (**Section 108**). Section 108 on the other hand provides that in these kind of cases the burden of proving that the person is living shifts to the person who affirms it. It can be also said that section 108 is an exception to the general rule contained in section 107.

Section 107 provides that in case where the person is shown to have existed within the last 30 years the and there is a presumption related to his existence and if someone alleges that he is dead then he must prove that fact. It must be noted that the presumption is not a very strong one. As per section 108 if a person is not heard for 7 years and there is a presumption that is dead and if anybody alleges that he is still alive then the person affirming this must prove that fact. Thus an absence of seven years creates a rebuttable presumption of death.

Let's suppose there is a simple presumption of death and the said presumption has nothing to do with the time of death, for which independent evidence is needed. It was observed in the case of *Darshan Singh v Gujjar Singh*²⁰ where the plaintiff claimed succession of estate of a person who was not heard for a period of 7 years. The High Court held that "*the date of the suit should be taken to be the date of death which was later objected.*"

Also in case of *Muhammad Sharif v. Bande Ali*²¹, one M mortgaged certain property to the defendant in 1890. Thereafter he disappeared and nothing was heard of him since then. His heirs filed a suit that M disappeared some 18 years ago he must presumed to have been dead for the last 11 years. It was held in this case that "*presumption in section 108 does not goes further than the mere fact of death. There is no presumption that he died in the first 7 years or in the last 7 years.*"

The presumption raised under section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to date or time of death. There is no presumption as to fact and circumstances under which the person may be died. Further the presumption would have been arise only on the lapse of seven years and would not apply on expiry of six years and 364 days or any time short of seven years. The presumption can be raised only when the question is raised before in the court, tribunal or

²⁰ (2002) 2 SCC 62

²¹ ILR (1911) 34 All 36

before an authority who is called upon to decide whether a person is alive or dead not otherwise.²²

Burden of proving relationship and Ownership thereto

According to **section 109**, where certain persons are shown to have acted in certain relation like partners, landlord and tenant or as principle and agent. In such a case the law presume them to be so related that the burden of proving that they were never so related or have ceased to be so shall lie upon the party who rebuts such relation. Also in cases where the ownership of a person is in question then in that case the burden of proving that he is not owner lies on the person who affirms so. (**Section 110**). This section gives effect to the principle that a possession is prima facie evidence of a complete title. The possession must be a physical possession. Further it must be noted that section 110 is applicable for movable and immovable property both.

In *Chief Conservator of Forest v Collector*²³ the plaintiff claimed to be pattedar of the land in question proving long and peaceful enjoyment of the land. It was held that *“though there was no proof of conferment of patta and acquisition of title, a presumption of ownership arose in favour of the plaintiff and in absence of any evidence on behalf of the government, rebutting the presumption, claim of the plaintiff must be upheld.”*

Good Faith and Burden of Proof

The concept of good faith is some or less being followed by every country's legal system in almost same concept. This principle have been used in several cases varying from civil to criminal cases. It owes its origin to law of equity. Good faith forbids either party by concealing what he privately knows, to draw the other into bargain from his ignorance of that fact and his believing the contrary.²⁴

However in Evidence Law under section 111 the said provisions deals with burden of proof in cases of good faith. According to section 111, when a person stands with another showing his confidence in him then the burden of proving the good faith of any transaction happened between them lies on the person who shows such a confidence. Relations of trust and confidence (i.e. fiduciary relation) include those of parent and child, lawyer and client spiritual guru and his followers, principal and agent, partner and firm, doctor and patient, persons in authority and those over whom he exercises authority.

²² LIC of India v Anuradha, (2004) 10 SCC 131

²³ (2003) 3 SCC 472

²⁴ *The Doctrine of Good Faith case*, available at

<https://www.lawteacher.net/free-law/the-doctrine-of-good-faith-case.php> visited on November 11, 2020 at 4:35 PM

It must be noted that the essence of good faith was there even before enforcing the transaction against the other party. The principle of equity is ingrained in section 111. In *Krishna Mohan Kul v Pranitima Maity*²⁵ it was held that “*onus of proof to prove due execution of document was in accordance with the law is always on donee/beneficiary, irrespective of the fact whether such party is defendant or plaintiff. Considerations involved in judging validity of transactions between persons standing in active confidential or fiduciary relationship are whether donor had competent and independent advice, his age, capacity and nature of benefit are very material.*”

Judicial Interpretation and Burden of Proof

The role of the judiciary with regard to shape up the concept of burden of proof as per the Indian evidence Act has assumed much significance. The judiciary, however, has not strictly adhered to the provisions of the Act. The Supreme Court's decision in *Vijayee Singh v. State of UP*²⁶, and other numerous cases has established and explained the concept of burden of proof. The following principles have been laid down below which are derived from the said decisions:

- a) *The prosecution must prove beyond reasonable doubt that the accused has committed the offence.*
- b) *There is a rebuttable presumption that the circumstances which bring the case under general exceptions do not exist.*
- c) *The accused may, after making his plea, prove his case beyond reasonable doubt or may lift presumption by a pre-ponderance of probabilities.*
- d) *The accused is entitled to benefit, if he manages to create a reasonable doubt as to the ingredients of the offence, even if he fails to prove his case under general exceptions.*

The Act requires the accused to prove his plea, on the other hand the judiciary has diluted it and allowed the accused to take the benefit of the general exceptions available to the accused. The judicial stand is a clear reflection of all common law hangover over Indian law. This is evident from the importance attached to some of the cardinal principles of English Criminal jurisprudence. A blind following of the principles of common law, namely the most common one i.e. “*the accused is presumed to be innocent until proved guilty,*” due to which the prosecution has to prove the guilt of the accused person beyond a reasonable doubt, and the other is “*the accused is entitled to benefit even if there is a doubt as to the ingredients of the*

²⁵ (2004) 9 SCC 468

²⁶ AIR 1990 SC 1459

offence" has led to dilution of the principles enshrined in the Act. It is worthwhile to note that the principles laid down by the judiciary in relation to general exceptions can be traced back to English cases, *Woolmington v. D.P.P*²⁷ in this case, it was held by the court that the burden of proof is on the prosecution to prove beyond reasonable doubt that the offence was actually committed and on the other side the accused need not prove his innocence. The judiciary had time and again recognized, the principle laid down by judiciary in *Woolmington*'s case to such an extent that it ultimately became the burden of proof w.r.t. general exceptions. However the Indian judiciary has made the situation disastrous for the prosecution. Section 105 of the Indian Evidence Act shows that they operate at different levels as section 105 deals with "burden of proof on the accused to prove that his action of committing the offence falls within general exception", while on the contrary *Woolmington* case deals with the benefit which can be availed by an accused when in case the prosecution has failed to prove the case against the accused. Due to this the prosecution has not only has to prove the offence beyond reasonable, doubt, but also have to prove that the act which resulted in offence does not fall within the ambit of general exceptions.

Dishonest Misappropriation and Burden of Proof

In *Jaikrishnadas Manohar - Das Desai and Anr. v. State of Bombay*²⁸ Court observed as: *"The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation on conversion. The conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, of over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made. It is true that under section 105 of the Indian Evidence Act the onus of proving exceptions mentioned in the Indian Penal Code lies on the accused, but this section does not at all indicate the nature and the standard of proof is required."*

Where the accused is called upon to prove his case or prove the exceptions of IPC, the mode of proof by standard of benefit of doubt is not applicable to the accused. The defence must be

²⁸ 1960 AIR 833, 1960 SCR (3) 329

sufficient to show that version which can very well counter the probability of prosecution's version and then only the said defence would be sufficient to throw a ray of doubt on the prosecution side which can ultimately lead to the rejection of the case by the court.²⁹

In *Harbhajan Singh v State of Punjab*³⁰ the Court observed as: “*whether the gravity of onus of proof on accused (claims during an exception) and that of prosecution in a criminal case are same? To answer to this, judiciary opined that where the burden of proof is on the accused, then he is not required to discharge this burden in that extent where he have to prove his case without reasonable doubt. The judiciary also opined that “no doubt test have been prescribed for determining whether the prosecution has discharged his onus of proof to prove the guilt of the accused but yes the same test can't be applied in the case of an accused who is seeking benefit of exception enshrined in the Act.”* It must be noted that where in cases the accused is called to prove his/her case and in case if he/she fails under the said exception for which he was trying to take benefit then in that case the law treats the onus of proof as discharged and if vice versa i.e. as soon as the preponderance of probability is proved, the burden shifts to the prosecution which has still to discharge his original duty pertaining to onus of proof. The point which must not be forgotten here is that the original onus of proof never shifts in a case i.e. to say that the prosecution has and in all stages have to prove the guilt of the accused person beyond reasonable doubt.

CONCLUSION

Thus the researcher would like to say that burden of proof is a very important facet of a case and it is one of those elements which cannot be overlooked or neglected. Be the type of case, the said concept will always come into play. Burden of proof on an issue essential to culpability in an offence arguably provides the greatest interference with the presumption of innocence, and its necessity requires the strongest justification. It is true that there can be a big distinction between criminal and civil penalties, but the fact is that burden of proof lies on the party no matter the nature of the case is. The rule governing burden of proof is that whoever lays a claim must present evidence or proof. This rule is subject to the principles that the burden of proof rests on that party that either asserts or denies a claim. An accused be only presumed guilty based on the facts established by the plaintiff to the court in accordance with the burden of proof that rules the case.

²⁹ Y Srinivasa Rao, *Three Principles of Criminal Jurisprudence*, available at <https://articlesonlaw.wordpress.com/2015/04/25/three-principles-of-criminal-jurisprudence/> visited at November 12, 2020 at 8:23AM

³⁰ 1966 AIR 97, 1965 SCR (3) 235

BIBLIOGRAPHY**Books Referred**

1. Dr. Ashok Jain: Law of Evidence (Sixth Edition), Ascent Publications
2. Avatar Singh: The Law of Evidence (Fifth Edition), Central Law Agency

Statutes Referred

1. Indian Evidence Act, 1872
2. Indian Penal code 1860
3. Indian Constitution 1950

Websites

1. Ipleaders
2. Lawctopus
3. Lawteacher

